IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. 73-6061

ARNOLD JAY SOLOMON,

Petitioner,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO GRANTING OF WRIT OF CERTIORARI

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Respondent, People of the State of California, respectfully prays that a Writ of

Certiorari to review the judgment of the Court of Appeal of the State of California, entered against plaintiff in the above-entitled case on July 13, 1973, not issue.

OPINIONS BELOW

The opinion of the Court of Appeal of the State of California is reported in People v. Solomon, 33 Cal. App. 3d 429, 108 Cal. Rptr. 47, a copy of the original of which is attached to Petitioner's petition to this Court as Appendix "B."

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3), a timely petition for hearing by the California Supreme Court having been denied on October 11, 1973, it being the highest court of the State of California in which a decision could be had.

QUESTION PRESENTED

Whether California Penal Code Section 647, subdivision (e) is unconstitutional on its face under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

California Penal Code Section 647(e) provides:

> "§647. [Disorderly Conduct: Punishment.] Every person who commits any of the following acts shall be guilty of disorderly conduct, a misdemeanor: . . .(e) Who loiters or wanders upon the street or from place to place, without apparent reason or business and who refuses to identify himself and to account for his presence when requested by any peace officer so to do, if the surrounding cir-

cumstances are such as to indicate to a reasonable man that the public safety demands such identification."

The Fourth Amendment to the United States Constitution provides:

"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fifth Amendment to the United States Constitution provides:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of

a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Section 1 of the Fourteenth Amendment to the United States Constitution provides:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or im-

munities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

On September 18, 1972, officers of the Los Angeles Police Department received a radio call which stated "Possible 211 (robbery) suspect at Bob Burns Restaurant, Victory and Laurel Canyon [denoting an intersection in the San Fernando Valley area of Los Angeles]." Upon arrival, a waitress pointed out Petitioner to the officers, telling them Petitioner, who was then sitting at the counter five stools from the cash register, was acting peculiarly. Petitioner had been present about 45 minutes, drinking only one cup of coffee. According to the waitress, Petitioner had been rude to her and appeared to be observing the other restaurant

patrons. The waitress noticed a strong resemblance of Petitioner to a man who had recently robbed the restaurant. Thinking it might be the same person, she called the police. The police approached Petitioner and asked him to identify himself. Petitioner refused to state his name or speak to the officers, and he had no identification on his person. The time was then 4:20 a. m. Petitioner was taken into custody and transported to the police station for further investigation. There he was fingerprinted and identified solely because his fingerprints were on file with the Los Angeles Police Department. The time was then 6:00 a. m. The conclusion of the officers' report is set forth verbatim:

"BOOKING:

Mr. Solomon was booked 647 E PC (no ID) on the advice of L. Shaw, N. Hwd W/C [Watch Commander], in that Mr. Solomon was loitering in a public restaurant at a late hour and acting suspiciously. Further, that the restaurant had been re-

cently robbed by a man who closely resembled Mr. Solomon and that Mr. Solomon refused to cooperate with ofcr's in their investigation and refused to identify himself or answer questions or explain his presence under the suspicious circumstances when the public safety demands his response & was so advised. Defendant would have been listed as a 'John Doe' if his fingerprints had not been on file with this Dept."

The same day a complaint was filed in the Los Angeles Municipal Court charging Petitioner with violating California Penal Code Section 647(e), whereupn he was arraigned. Upon being booked, the police advised Petitioner that his bail was $250.00; however, at his arraignment Petitioner stood mute when asked to enter his plea, and the magistrate entered a plea of not guilty and set bail at $500.00, which Petitioner posted the same day. Subsequently, Petitioner

was allowed to withdraw his not guilty plea in order to demur to the complaint (California Penal Code Section 1004). The demurrer was sustained by the Municipal Court and Respondent filed timely notice of appeal to the Appellate Department of the Superior Court of the State of California for the County of Los Angeles. On March 23, 1973, the Appellate Department of the Superior Court filed its Memorandum Opinion and Judgment reversing the judgment of the Municipal Court. The opinion of the Appellate Department of the Superior Court relied on stare decisis, as it was required to do (Auto Equity Sales v. Superior Court [1962] 57 Cal. 2d 450 [20 Cal. Rptr. 321; 369 P. 2d 937]), and followed People v. Weger [1967] 251 Cal. App. 2d 584 [59 Cal. Rptr. 661] (cert. den., Weger v. California, 389 U.S. 1047 [88 S. Ct. 774; 19 L. Ed. 2d 840]) which had upheld the constitutionality of California Penal Code Section 647(e) as constitutional even in light of Papachristou v. Jacksonville [1972] 405 U.S. 156

[92 S.Ct. 839; 31 L.Ed. 2d 110] and California v. Byers [1971] 402 U.S. 424 [91 S.Ct. 1535; 29 L.Ed. 2d 9].

Petitioner timely filed with the Appellate Department of the Superior Court a petition for certification to the California Court of Appeal (California Rules of Court, Rule No. 63). Said petition was granted, and the Appellate Department of the Superior Court filed its order certifying the cause to the Court of Appeal on April 5, 1973. The question certified by the Appellate Department of the Superior Court to the Court of Appeal asked whether California Penal Code Section 647(e) was constitutional on its face. In its order certifying the cause to the Court of Appeal, the Appellate Department of the Superior Court noted that the Appellate Department of the Superior Court of the State of California for the County of Orange had concluded, in a judgment without an opinion, that California Penal Code Section 647(e) was un-

constitutional on its face. (This fact is gleaned from the order of the Appellate Department of the Superior Court of the State of California for the County of Orange granting application for certification to the Court of Appeal [Petitioner's Appendix "E"] in the case of People v. McCarter [Orange County Superior Court Appellate Department, File No. AP-1141]. In that case, the California Court of Appeal denied the transfer [Petitioner's Appendix "F"].

The transfer of Petitioner's cause to the California Court of Appeal was accepted by the Court of Appeal, the immediate effect of which was to vacate the Opinion and Judgment of the Appellate Department of the Superior Court of the State of California for the County of Los Angeles. (The apparent anomaly of the Court of Appeal denying one case striking down the statute, and then accepting another which sustained the statute, is no doubt explained by the

fact that the Court of Appeal consists of several districts and divisions within districts, each with different Justices. Under California law, the judgment of the Los Angeles Appellate Department would be binding only on judges of the municipal courts in Los Angeles County; the judgment of the Orange County Appellate Department would be binding on judges of the municipal courts in Orange County.)

On July 13, 1973, the Court of Appeal filed its Judgment and Opinion in Petitioner's case. Said Judgment and Opinion is the Judgment and Opinion which Petitioner seeks to have reviewed by way of the instant Petition for Certiorari.

Petitioner then timely filed a Petition for Hearing in the Supreme Court of the State of California, which hearing was denied on October 11, 1973 (California Rules of Court, Rule No. 28).

REASONS FOR DENYING THE WRIT

I

INTRODUCTION

This case presents the question of the propriety of legislative authorization to police to act to prevent crime, as opposed to the more common police function of investigating, solving and participating in the prosecution of crimes that have already been committed. To that end, the California Legislature enacted Penal Code Section 647(e) in 1961. Prior to 1961, California had had in its penal statutes since 1855 the ancient crime of vagrancy, defined as "every person who roams about from place to place without any lawful business" (former Penal Code Section 647(3)) and "every person who wanders about the streets at late or unusual hours of the night, without any visible or lawful business (former Penal Code Section 647(6)). The California Legislature and many

public figures desired to eliminate the status aspects of California vagrancy statutes and efforts at revision began in 1958. In 1959, a bill was passed by the Legislature which did not contain the words "if the surrounding circumstances are such as to indicate to a reasonable man that the public safety demands such identification." The bill was vetoed by the governor. In 1961, Section 647(e) was enacted. The legislative intent expressed was that Section 647(e) was intended to eliminate "status" crimes and arrests based on suspicion alone. (22 Assembly Interim Committee Reports No. 1 [1961].)

Meanwhile, independent of the Legislature's efforts at eliminating "status" offenses, the California Supreme Court adopted a narrow definition of the word "loiter" (In re Cregler [1961] 56 Cal. 2d 308; 14 Cal. Rptr. 289, 363 P. 2d 305) Cregler was charged with

violating (former) California Penal Code Section 647(4), which provided:

> ". . . 4. Every person known to be a pickpocket, thief, burglar or confidence operator, either by his own confession, or by his having been convicted of any of such offenses, and having no visible or lawful means of support, when found loitering around any steamboat landing, railroad depot, banking institution, broker's office, place of amusement, auction room, store, shop or crowded thoroughfare, car, or omnibus, or any public gathering or assembly; . . .
>
> "Is a vagrant, and is punishable by a fine of not exceeding five hundred dollars ($500), or by imprisonment in the county jail not exceeding six moonths, or by both such fine and imprisonment."

The California Supreme Court held that the use of the word "loiter" in criminal statutes ". . .obviously connotes lingering in the designated places for the purpose of committing a crime as opportuniity may be discovered." (In re Cregler, supra, at p. 312)

Penal Code Section 647(e) was attacked as unconstitutionally vague and uncertain, and violative of the right against self-incrimination, in People v. Weger (1967) 251 Cal. App. 2d 584; 59 Cal. Rptr. 661. The California Court of Appeal sustained the statute; the California Supreme Court denied a hearing, and this court denied a petition for Certiorari (Weger v. California 389 U.S. 1047 [88 S.Ct. 774, 19 L. Ed. 2d 840].).

II

PETITIONER'S GROUNDS OF ATTACK ON THE STATUTE

A. Stare Decisis

Petitioner contends that California Penal Code Section 647(e) is unconstitutional by reason of this court's opinions in Papachristou v. Jacksonville [1972] 405 U.S. 156 [92 S.Ct. 839; 31 L.Ed.2d 110], and Palmer v. City of Euclid [1971] 402 U.S. 544 [91 S.Ct. 1563; 29 L.Ed. 2d 98].

B. Arbitrariness

Petitioner contends that the opinion of the California Court of Appeal encourages police officers to make arbitrary arrests in that (he contends) it is left to the police officer to determine if a defendant is possessed of "suitable" identification.

C. Vagueness and Uncertainty

Petitioner contends that California Penal Code Section 647(e) is unconstitutionally vague and uncertain in that it does not give the

citizen fair notice of what the statute forbids.

D. Self-incrimination

Petitioner contends that California Penal Code Section 647(e), as construed by the California Court of Appeal, violates a citizen's right against self-incrimination.

III

CALIFORNIA PENAL CODE SECTION 647 (e) DOES NOT MAKE STATUS A CRIME, BUT MERELY REGULATES CONDUCT. CALIFORNIA PENAL CODE SECTION 647 (e) IS CONSTITUTIONAL ON ITS FACE AND IS CLEARLY NOT THE TYPE OF STATUTE CONDEMNED BY THIS COURT IN PAPACHRISTOU v. JACKSONVILLE AND PALMER v. CITY OF EUCLID

California Penal Code Section 647 consists of eight subdivisions prohibiting different types of conduct which are said to consti-

tue "disorderly conduct", a misdemeanor. Subdivision (a) prohibits the solicitation or engaging in lewd conduct in a public place (and not the status of being a "lewd" person or a homosexual); subdivision (b) prohibits the solicitation of or engaging in prostitution (and not the status of being a prostitute); subdivision (c) prohibits begging in public places (and not the status of being a beggar); subdivision (d) prohibits loitering in or about a public toilet for the purpose of violating subdivision (a) (and not the status of being a loiterer or a homosexual); subdivision (e), the subdivision that is the subject of the instant petition; subdivision (f), public intoxication (and not the status of being a common drunk); subdivision (g), night prowling and peeking in doors and windows, on private property (and not the status of being a known prowler or a "peeping Tom"); and subdivision (h), lodging on private property without the owner's permission (and

not the status of being a transient or a person with no permanent address).

California Penal Code Section 647 does not punish anyone's "status", it does not prohibit membership in a particular group. It does regulate conduct. According to the California Court of Apeal, three elements must coalesce before a violation of Section 647(e) occurs: there must be "loitering as contrued by the California courts, i.e., ". . .lingering in the designated places for the purpose of committing a crime as the opportunity may be discovered" (In re Cregler [1961] 56 Cal. 2d 308, 312; 14 Cal. Rptr. 289, 363 P. 2d 305); the circumstances must be such as to indicate to a reasonable man that the public safety demands identification; and, finally, a refusal to identify oneself. Refusal to identify is an element of the crime. In this respect, Section 647(e) and this case are markedly similar to

New York Penal Law Section 240.35(6) and People v. Berck, 32 N.Y. 2d 567 (cert. den., 42 U.S. Law Week 3352, No. 73-58 [12-11-73]). The New York Court of Appeals held that refusal to identify oneself was not an element of the crime, thus reducing the crime to merely loitering without apparent reason under circumstances which justify suspicion that one may be engaged or about to engage in crime (People v. Berck, 32 N.Y. 2d 567, fn. 2). As construed by New York, their statute would have justified an arrest and conviction for nothing more than mere suspicion of unlawful activity, as opposed to Section 647(e), wherein a conviction cannot be obtained or an arrest justified if one identifies himself. Refusal to identify oneself under circumstances which justify such inquiry is the conduct prohibited in California, but not in New York.

It is interesting to note that the New York Court of Appeals mentioned several cases wherein they sustained loitering statutes similar to California's (People v. Pagnotta, 25 N.Y. 2d 333, cf., California Penal Code Section 647(d); People v. Merolla, 9 N.Y. 2d 62, cf. former California Penal Code Section 647(4), In re Cregler, 56 Cal. 2d 308).

Respondent would submit that Papachristou v. Jacksonville [1972] 405 U.S. 156 [92 S.Ct. 839; 31 L.Ed. 2d 110] and Palmer v. City of Euclid [1971] 402 U.S. 544 [91 S.Ct. 1563; 29 L.Ed. 2d 98] presented statutes very unlike California Penal Code Section 647(e). The ordinance in Papachristou v. Jacksonville, supra, was held unconstitutional on its face because it was worded so broadly and "cast such a large net" so as to include all manner of innocent, lawful activity that it failed to give adequate notice of the prohibited

conduct; also, because it established offenses where one's status in life was a crime, and, finally, because it allowed a conviction for being suspected of being about to attempt to commit some crime. Such is a far cry from California Penal Code Section 647(e), which, in essence, requires that an officer have probable cause to detain and investigate, plus, refusal by the defendant to identify himself.

Palmer v. City of Euclid, supra, is first of all dissimilar from the instant case because the statute there was not held unconstitutional on its face, but rather was held to have been unconstitutionally applied. Since the instant petition arose upon a demurrer and attacks Section 647(e) on its face, Palmer v. Euclid inferentially, considering the statute there in question, should stand for the proposition that Petitioner should be denied relief at this time. More substantively, the

statute in Palmer v. Euclid, supra, had been construed similar to the statute in People v. Berck, 32 N. Y. 2d 567, in that the essence of the crime in Palmer v. Euclid, supra, was "wandering" or being "abroad at late or unusual hours in the night without any visible or unlawful business. . .", rather than failing to give a "satisfactory account" of oneself.

As enacted, enforced and judicially construed and understood in California, the essence of a violation of Section 647(e) is a failure to identify oneself to an officer when one's conduct is so suspicious as to permit and demand inquiry by the officer. If one identifies oneself no crime is committed and the officer may not arrest the citizen without something further. No arrest can be made under such circumstances on inchoate suspicion, there must still be probable cause to arrest for an actual crime. Thus, California Penal Code

Section 647(e) is clearly not the type of statute condemned in Papachristou v. Jacksonville, supra, and Palmer v. City of Euclid, supra.

IV

CALIFORNIA PENAL CODE SECTION 647(e) DOES NOT ENCOURAGE ARBITRARY ARRESTS, NOR DOES IT PLACE UNFETTERED DISCRETION IN THE HANDS OF CALIFORNIA POLICE OFFICERS TO DETERMINE IF A CITIZERN HAS VIOLATED THE STATUTE, NOR DOES IT AUTHORIZE ARRESTS AND CONVICTIONS ON LESS THAN PROBABLE CAUSE

Petitioner's argument that California Penal Code Section 647(e) allows arrests to be made and convictions to be had on less than probable cuase merely begs the question. If there is probable cause to detain a citizen (Terry v. Ohio [1968] 392 U.S. 1 [88 S.Ct.

1868; 20 L. Ed. 889], and the citizen refuses to identify himself, Section 647(e) is violated and probable cause to arrest then exists (California Penal Code Section 836: "A peace officer may. . . without a warrant, arrest a person: (1) whenever he has reasonable cause to believe that the person to be arrested has committed a public offense in his presence. . . .").

What might this court have expected Officer McFadden to have done on October 31, 1963, had not Terry and Chilton been illegally armed? In fact, Officer McFadden first asked for their names, but the men only "mumbled something" (352 U.S. 7). Is not a "frisk" a greater invasion of a citizen's personal security than one's identity? As in Terry v. Ohio, supra, Section 647(e) deals with "--necessarily swift action predicated upon the on-the-spot observations of the officer on the beat--. . . . ." If the policeman is rebuffed when he

"makes reasonable inquiries" (392 U.S. 30) his right to investigate, recognized in Terry v. Ohio, supra, is thwarted and ineffective. If the Legislature wishes to make such a right effective, it has the right to impose sanctions. In doing so, it does not authorize arbitrary arrests on less than probable cause. If the policeman has a right to investigate, the citizen has at least a limited duty to cooperate.

While this case arose on a demurrer, and the facts were not before the trial court, they do show that the power granted under Section 647(e) is not arbitrarily exercised, and that the basis for an arrest under Section 647(e) is the failure to identify oneself and not the suspicious circumstances.

In urging upon this court his argument that arrests under Section 647(e) may be arbitrary, Petitioner implies that the court below

authorized the police to make an arrest when they determine that a citizen has not produced "suitable" identification. Petitioner refers in his petition to "suitable" and "suitability" ten times, yet neither the court below nor the statute authorize any such determination. The Court of Appeal used the word but once, in the next-to-the-last paragraph of its opinion, clearly referring to its earlier statement that such identification be "credible and reliable", "authentic", "genuine" and such as provides the "means for later getting in touch with the person who has identified himself." (People v. Solomon, 33 Cal. App. 3d 429, 438.) As Chief Justice Warren wrote in Terry v. Ohio (392 U.S. 1, 13), "street encounters between citizens and police officers are incredibly rich in diversity." This means available to identify oneself are also diverse and some means of identification are well-known to increase suspicion (United States v. Robinson, No. 72-396,

42 U.S. Law Week 4055). Obviously, if a citizen pulls a dollar bill out of his pocket, points to the portrait thereon, and identifies himself as "George Washington", the officer is justified in desiring something more. An officer also might recognize a citizen's face and, upon hearing the citizen merely state his name, need no more to allay suspicion or be able to get in touch with him later. Equally clearly, if a senile adult wanders away from a rest home in his bathrobe, and can't remember his name, he is not going to jail, but the officer will be sure not to abandon the matter. If a plainclothes police officer unexpectedly comes to one's home on stated legitimate business, no reasonable person will let him in without first scrutinizing his identification. Section 647(e) does not require one to "obtain a license to walk on a public stret", and it does not even require one to produce tangible evidence of his identity. It merely requires

that he identify himself; common sense dictates that it be done in a "credible and reliable" manner. Whether one identified himself in such a manner is not for the officer to decide, but, in appropriate cases, is a question of fact for the jury or judge.

V

CALIFORNIA PENAL CODE SECTION 647(e) IS NEITHER VAGUE NOR UNCERTAIN

Petitioner merely asks this court ". . . to consider whether citizens are indeed informed as to what constitutes criminal activity under this statute", without articulating why he believes it to be either vague or uncertain. It is neither vague nor uncertain to respondent. The standards justifying inquiry by an officer are comparable to those of Terry v. Ohio, supra (33 Cal.App.3d 429, 435). All that the statute requires of the citizen is that he identify himself. The authority of a po-

lice officer is frequently challenged by the citizen, but the place to litigate such a challenge is in the courtroom or by complaint to the officer's superiors, not on the street. Further, the statute does not require identification to be made sua sponte, but only upon inquiry.

Under Section 647(e), a citizen realizes that he must identify himself or give some explanation for his presence in a place, when asked to by a police officer. The police officer understands that if an identification or an explanation of presence are given by a citizen, no arrest may be made under Penal Code Section 647(e). The statute functions to compel the response of citizens in a very restricted threshold area of investigation. Thus, the statute is sufficiently precise in its terms to give fair warning to those against whom it may be enforced, and to provide ex-

plicit standards for those who enforce it. Grayned v. City of Rockford, 408 U.S. 104, 108. It is not unconstitutionally vague.

VI

CALIFORNIA PENAL CODE SECTION 647(e) DOES NOT VIOLATE THE RIGHT OF A CITIZEN AGAINST SELF-INCRIMINATION

The opinion of the court below narrowed the holding of People v. Weger, 251 Cal. App. 2d 584 [59 Cal. Rptr. 661] in that one is now required to account for his presence only as a means of producing reliable and credible identification. Such construction is added protection for the potential defendant, for he need not account for his presence in those cases when he is unable to identify himself in some conventional manner. It serves to relieve the citizen from obtaining "a license to walk on a public street", and furnishes relief for the citizen who inadvertently may have forgotten

his wallet.

Plaintiff misses the point of California v. Byers [1971] 402 U.S. 424 [29 L.Ed.2d 9, 91 S.Ct. 1535]. In that case, the argument was made that the mere identification of a driver involved in an accident could lead to criminal prosecution. Petitioner makes no such argument, but seems to accept the proposition that one must identify himself under suspicious circumstances. He contends that if one has no conventional, reliable and credible means of identifying himself, he may be forced to incriminate himself. Respondent thinks that this contention begs the question. The statue does not force any answers, it merely allows the citizen an optional method of identifying himself. It was not held by the court below that such statements would be admissible in a prosecution for some other crime. It seems manifest that one who can identify him-

self by accounting for his presence will not accomplish identification by explaining that he has just committed a crime; rather, one who has just committed a crime and is unable to identify himself in some other manner will either remain silent or lie. One would have to be incredibly stupid to try to identify himself by stating he was "casing a job, a stick-up." While "[S]treet encounters between citizens and police officers are incredibly rich in diversity[.]" (Terry v. Ohio, supra, 392 U.S. at p. 13), respondent is unable to imagine such an encounter wherein a citizen might seek to identify himself by stating he was guilty of a criminal offense.

The plurality in California v. Byers, supra, stated that merely identifying oneself does not amount to making an incriminatory statement, citing United States v. Sullivan [1927] 274 U.S. 259 [47 S.Ct. 607, 71 L.Ed.

1037]. The claim that the requirement that one identify himself amounts tothe making of an incriminating statement amounts to "an extreme if not an extravagant application of the Fifth Amendment." (Id., at 263-64, 71 L.Ed. 1040.) As the California Court of Appeal pointed out in People v. Weger, supra, the statute is aimed "not at [obtaining] a declaration, but failure to offer an explanation, under circumstances which call for one." (Id., 257 Cal. App. 2d at 601.) The silence to be punished is merely nonassertive conduct. In any event, as the court below held, failure to explain one's presence (which is nonassertive conduct) is only punishable after it is apparent that one cannot identify himself otherwise (People v. Solomon, 33 Cal. App. 3d at 437-438). Petitioner's need to remain anonymous while loitering in Burns' Restaurant (as loitering is defined in California), was miniscule compared to the need of society to know who

he was, considering the fact that he bore a strong resemblance to a recent robber and was apparently "casing a stick-up." Absent the authority of California Penal Code Section 647 (e), the officers would have had to tell the waitress they could do nothing, and they would have left. If Petitioner had then robbed the restaurant, one might reasonably ask why the taxpayers support a police department at all. If he actually were the prior robber, knowledge of his name would have been no more incriminating to the police than was his physical appearance. Asking Petitioner's name was the only reasonable thing the police could have done under the highly suspicious circumstances, and a response would not have been incriminating.

CONCLUSION

California Penal Code Section 647(e) provides a constitutionally valid authority under

which a police officer may, under specific limited circumstances, demand that a citizen identify himself. It helps modern police departments to deal with the tremendous social problem of crime in a manner which both minimizes invasion of personal rights and at the same time serves the community's need for security from criminal incursions. It is supported by this court's past rulings in Weger v. California, supra, and Terry v. Ohio, supra. It is not arbitrarily enforced, and is neither vague nor uncertain. Identifying oneself does not amount to the making of an incriminating statement.

The Petition for Certiorari should be denied.

Respectfully submitted,

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